IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
MONDAY, THE FOURTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE N.V. RAMANA
WRIT PETITION NO : 8247 of 2004

Between:

M/s. Muralikrishna Travels rep. by Proprietor Sajja Muralikrishna, S/o Samodar Rao

R/o Vijayawada, Krishna Dist.

..... PETITIONER

AND

The Asst. Provident Fund Commissioner (ENF) Padmavathi Buildings, Laxmipuram, Guntur

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the Assistant Provident Fund Commissioner, Guntur and the Authority u/s. 7A of the EPF & MP Act, 1952 in seeking to cover the Petitioner-establishment under the EPF&MP Act, 1952 and also the order purported to have been passed by the Authority in Proc.No.AP/33645/7A/SRO/GNT/1959 dt: 8-1-2001/22-1-2001 and served in March, 2004, as illegal, in voilation of the principles of natural justice and void ab initio and pass such other order or orders as may deem fit.

For the Petitioner:MR.M.PANDURANGA RAO

For the Respondent No.: MR.R.N.REDDY (SC FOR EMPLOY'S PF ORG.)

The Court Made the Following :

ORDER:

This writ petition is filed praying to declare the action of the respondent covering the petitioner-establishment under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (in short 'the Act') and his proceedings No.AP/33645/7A/SRO/ GNT/1959 dated 8-1-1001/22-1-2001 as illegal and violative of the principles of natural justice.

According to the petitioner, the petitioner-firm came into existence during 2000, and while so, the respondent without issuing any notice, brought the firm under the purview of the Act from 1998 and issued the impugned proceedings under Section 7-A of the Act directing it to remit an amount of Rs.2,14,989-00 towards certain contributions mentioned in the order and Rs.29,518-00 towards the interest thereon. It is averred that the total number of workmen employed in the firm is below 15, and as such the provisions of the Act are not applicable to the firm and the impugned proceedings have been issued without giving opportunity of hearing to the petitioner, which is violative of the principles of natural justice, and therefore, the same are illegal and arbitrary, and more so calculating the amount from 1998, when the firm itself did not come into existence.

Heard the learned counsel for the petitioner and the learned standing counsel for the respondent and at their request the writ petition is disposed of at the admission stage.

Learned counsel for the petitioner submits that the impugned proceedings issued under Section 7-A of the Act is illegal, arbitrary and violative of the principles of natural justice, since neither notice nor opportunity was given to the petitioner either before bringing the petitioner-firm into the purview of the Act or before passing the impugned order.

Learned Standing Counsel appearing for the respondent submitted that before passing the impugned order dated 8-1-2001, the petitioner was served with a notice and the said notice was acknowledged by the petitioner himself on 8-8-2000 and in spite of service of notice, the petitioner has not chosen to appear before the authority and therefore, the impugned order came to be passed.

The learned standing counsel further submitted that the petitioner has already filed an application to set aside the *ex parte* order, but it was not filed in a proper form, and submitted that the petitioner has to file a petition under sub-section (4) of Section7-A of the Act before the authority, to which course of action the petitioner readily agreed.

In the above circumstances, the writ petition is disposed of with the following directions:

The petitioner is directed to file his application before the competent authority to set aside the *ex parte* order within a period of 10 days from the date of receipt of a copy of this order and the same shall be considered and disposed of in accordance with law. Till final orders on the application to be filed by the petitioner are passed by the competent authority, the respondent is directed not to take any coercive steps to recover the amount mentioned in the impugned proceedings. No costs.

ASSISTANT REGISTRAR

//True copy//

SECTION OFFICER

14-6-2004/asp

To

1. The Asst. Provident Fund Commissioner (ENF) Padmavathi Buildings, Laxmipuram, Guntur
2. 2 CD copies
3. 3. One spare copy